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Attorney for Plaintiff

/as

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KASSIE E. BENSON,

Plaintiff,

v.

KILOLO KIJAKAZI,<sup>1</sup>

Acting Commissioner of Social Security,

Defendant.

) Case No.: 4:19-cv-03447-JSW

) No. 20-17010

) STIPULATION AND ~~[PROPOSED]~~  
) ORDER FOR THE AWARD AND  
) PAYMENT OF ATTORNEY FEES  
) PURSUANT TO THE EQUAL  
) ACCESS TO JUSTICE ACT, 28  
) U.S.C. § 2412(d)

On March 2, 2022, the United States Court of Appeals for the Ninth Circuit issued an order reversing the final decision of the Defendant, Kilolo Kijakazi, the Acting Commissioner of Social Security (Commissioner), with a remand for a rehearing, 42 U.S.C. § 405(g) (sentence four); judgment was entered.

<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure Kilolo Kijakazi should be substituted, therefore, for Commissioner Andrew Saul as Defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

In the interest of administrative and judicial economy, the parties have agreed to stipulate that an award of TWELVE THOUSAND TWO HUNDRED FIFTY DOLLARS AND ZERO CENTS (\$12,250.00) in attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), is reasonable. Defendant shall also reimburse Plaintiff \$182.00 for copying costs pursuant to 28 U.S.C. 1920. This award is without prejudice to Plaintiff's right to seek attorney's fees under section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. However, this award shall constitute a complete release from and bar to any claims Plaintiff may have relating to EAJA fees and costs. Further, such award shall not be used as precedent in any future cases, nor be construed as a concession by the Commissioner that the original administrative decision denying benefits to Plaintiff was not substantially justified.

After the Court issues an order for EAJA fees to Plaintiff, the Government will consider the matter of Plaintiff's assignment of EAJA fees to Harvey P. Sackett ("Counsel"). Pursuant to Astrue v. Ratliff, 560 U.S. 586 (2010), the ability to honor an assignment will depend on whether the fees are subject to any offset allowed under the United States Department of the Treasury's Offset Program. After the order for EAJA is entered, the Government will determine whether they are subject to offset. Fees shall be made payable to Plaintiff, but if the Department of Treasury determines Plaintiff does not owe a federal debt, then the Government shall cause the payment of fees, expenses, and costs to be made payable directly to Counsel, pursuant to the assignment executed by Plaintiff. Any payments made shall be delivered and made payable to Counsel.

Accordingly, Defendant agrees to pay Plaintiff \$12,250.00 in attorney's fees and reimburse Plaintiff for \$182.00 in costs.

All parties whose signature lines appear in this document have consented to its filing. This award is without prejudice to the rights of Sackett and Associates and/or Harvey P.

Sackett to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the savings clause provisions of the EAJA.

Dated: April 11, 2022

SACKETT AND ASSOCIATES

By: /s/ HARVEY P. SACKETT  
HARVEY P. SACKETT  
Attorney for Plaintiff  
KASSIE E. BENSON

Dated: April 11, 2022

STEPHANIE HINDS  
United States Attorney

By: /s/DANIEL PAUL TALBERT  
DANIEL PAUL TALBERT  
Special Assistant United States Attorney  
Attorneys for Defendant  
[\*As authorized by email on 4/11/22]

**ORDER**

Pursuant to the stipulation, IT IS SO ORDERED.

Dated: April 11, 2022

  
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HON. JEFFREY S. WHITE  
United States Senior District Judge